

<p style="text-align: right;">Page 202</p> <p>1 D. Larue</p> <p>2 GAAS.</p> <p>3 Q. But this is neither to GAAS or to</p> <p>4 GAAP, it's to typical auditing procedures, so</p> <p>5 paragraph 7 has nothing to do -- you were</p> <p>6 expressing no opinion as to whether or not</p> <p>7 KPMG Belgium would or would not have</p> <p>8 typically reviewed the loan files in Belgium,</p> <p>9 correct?</p> <p>10 MR. BUTLER: Objection to form.</p> <p>11 A. That's not correct.</p> <p>12 Q. That's not correct?</p> <p>13 A. No, the financial statements I am</p> <p>14 looking at and reviewed are not the financial</p> <p>15 statements compiled under Belgium GAAP or</p> <p>16 audited under Belgium GAAS.</p> <p>17 My report focuses on the financial</p> <p>18 statement filed under U.S. GAAP which require</p> <p>19 the application of U.S. GAAS.</p> <p>20 Q. Okay. But that was a different --</p> <p>21 that's the answer to a different question.</p> <p>22 Here is my question. You are not</p> <p>23 expressing -- you say, Furthermore, there was</p> <p>24 no reason to expect that this loan</p> <p>25 documentation or any other funding</p>	<p style="text-align: right;">Page 204</p> <p>1 D. Larue</p> <p>2 A. Prohibited by whom?</p> <p>3 Q. U.S. GAAS.</p> <p>4 A. U.S. GAAS, as far as I know,</p> <p>5 doesn't prohibit the reviewing of any</p> <p>6 document that an auditor would like to review</p> <p>7 or considers necessary to review.</p> <p>8 Q. So you say there was no reason to</p> <p>9 expect that this loan documentation or any</p> <p>10 other funding documentation would have been</p> <p>11 reviewed by KPMG, but is it fair to say that</p> <p>12 you don't know what is the typical auditing</p> <p>13 in Belgium of software companies in Belgium?</p> <p>14 A. That's correct.</p> <p>15 Q. And so you do not know, do you not,</p> <p>16 whether or not there was a reason to expect</p> <p>17 KPMG to review the funding documents of the</p> <p>18 LDCs in performing its typical audit under</p> <p>19 Belgium standards?</p> <p>20 A. Under Belgium standards?</p> <p>21 Q. Yes.</p> <p>22 A. I don't know what the Belgium</p> <p>23 standards are.</p> <p>24 Q. So, in fact, KPMG may or may not,</p> <p>25 as part of its auditing -- audit of L&H,</p>
<p style="text-align: right;">Page 203</p> <p>1 D. Larue</p> <p>2 documentation would have been reviewed by</p> <p>3 KPMG as typical auditing procedures would not</p> <p>4 have called for such a review, correct?</p> <p>5 A. That's what I said, yes.</p> <p>6 Q. That's what you say, but, in fact,</p> <p>7 you don't know what KPMG Belgium typically</p> <p>8 does, correct?</p> <p>9 A. I do know that -- what I'm</p> <p>10 referring to here are the applications of</p> <p>11 U.S. auditing principles that KPMG was</p> <p>12 required, my understanding, to apply in order</p> <p>13 to render an opinion that the financial</p> <p>14 statements prepared under U.S. GAAP were in</p> <p>15 conformity with U.S. GAAP.</p> <p>16 Q. I'm asking really a different</p> <p>17 question, so let's see if I can do it.</p> <p>18 It is not your opinion, is it, that</p> <p>19 if Belgium auditing standards requires KPMG</p> <p>20 to review funding documentation, but U.S.</p> <p>21 GAAP does not, that KPMG was prohibited from</p> <p>22 reviewing that documentation, are you?</p> <p>23 MR. BUTLER: Can I hear the</p> <p>24 question again.</p> <p>25 (Record read.)</p>	<p style="text-align: right;">Page 205</p> <p>1 D. Larue</p> <p>2 sought to review the loan documentation of</p> <p>3 the LDCs, correct?</p> <p>4 A. Are you asking me are they</p> <p>5 prohibited under Belgium auditing principles</p> <p>6 from reviewing those documents?</p> <p>7 Q. No.</p> <p>8 A. Are you asking me, are they</p> <p>9 required to review those documents under</p> <p>10 Belgium GAAS, is that what you're asking me?</p> <p>11 Q. No. What I'm asking you, you do</p> <p>12 not know one way or another whether or not</p> <p>13 KPMG ordinarily would review funding</p> <p>14 documents of software customers of software</p> <p>15 companies in Belgium, correct?</p> <p>16 A. Under Belgium GAAS, I don't know.</p> <p>17 Q. Do you consider yourself an expert</p> <p>18 in auditing procedures?</p> <p>19 A. In auditing standards, yes.</p> <p>20 Q. What about in auditing procedures?</p> <p>21 A. I have a great deal of experience</p> <p>22 in doing forensic analyses of lengthy</p> <p>23 thousands of pages of documents to arrive at</p> <p>24 an opinion on the application or</p> <p>25 non-application of GAAP.</p>

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<p>1 D. Larue</p> <p>2 Q. And do you consider yourself an</p> <p>3 expert in auditing procedures?</p> <p>4 A. I think I just answered that</p> <p>5 question. I thought I said yes.</p> <p>6 Q. I will take it as a yes.</p> <p>7 Based upon your expertise in</p> <p>8 auditing procedures and auditing standards</p> <p>9 and in forensic evaluations, can you think of</p> <p>10 any reason that Dexia would not include the</p> <p>11 personal guarantees or the credit default</p> <p>12 swaps in Dexia's loan file other than to hide</p> <p>13 that fact?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 A. There may be other reasons.</p> <p>16 Q. What may they be?</p> <p>17 A. They may have to do with tax</p> <p>18 issues, they may have to do with personal</p> <p>19 preferences of the parties involved.</p> <p>20 Q. What do you mean, the parties</p> <p>21 involved?</p> <p>22 A. I guess there can be other reasons.</p> <p>23 I don't think that's the only reason.</p> <p>24 Q. I'm just asking you for what other</p> <p>25 reasons?</p>	<p>1 D. Larue</p> <p>2 MR. BUTLER: Objection to form.</p> <p>3 A. I don't know.</p> <p>4 Q. In your forensic examinations, you</p> <p>5 don't believe that people who have side</p> <p>6 agreements or don't include typical</p> <p>7 documentation in accordance with their</p> <p>8 policies are trying to commit fraud?</p> <p>9 A. It's a possibility.</p> <p>10 Q. It is a possibility, it's one</p> <p>11 possible reason?</p> <p>12 A. It's a possible reason.</p> <p>13 Q. And, in fact, as a forensic</p> <p>14 examiner, aren't side agreements red flags</p> <p>15 for forensic examiners?</p> <p>16 MR. BUTLER: Objection to form.</p> <p>17 A. They certainly can be. It depends</p> <p>18 on the facts and circumstances. What the</p> <p>19 side agreement relates to, the accounting</p> <p>20 issues involved.</p> <p>21 Q. A second reason you said was that</p> <p>22 keeping the credit default swap outside the</p> <p>23 loan documentation may be perceived to</p> <p>24 provide a different result under GAAP,</p> <p>25 correct?</p>
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<p>1 D. Larue</p> <p>2 A. I think one other reasons would --</p> <p>3 and, again, I'm not an expert in Belgium tax</p> <p>4 law, but there may have been a tax reason to</p> <p>5 do that. There may have been a perception on</p> <p>6 one or more of the parties that by doing it</p> <p>7 one way would qualify under one GAAP or SEC</p> <p>8 rule, whereas doing it a different way may</p> <p>9 qualify under a different GAAP procedure or</p> <p>10 principle.</p> <p>11 Q. When you say different GAAP</p> <p>12 procedure...</p> <p>13 A. Principle.</p> <p>14 Q. Or qualify it.</p> <p>15 Qualify what?</p> <p>16 A. There may have been a perception on</p> <p>17 the part of either a bank or the borrower</p> <p>18 that if something was done one way, you would</p> <p>19 get one accounting result or one tax result</p> <p>20 or one economic result, but if you did it</p> <p>21 another way, you would get a different tax</p> <p>22 result, accounting result or economic result</p> <p>23 or finance result. I don't know.</p> <p>24 Q. So one thing -- clearly one reason</p> <p>25 would be to try to hide it, correct?</p>	<p>1 D. Larue</p> <p>2 A. That's one possible reason.</p> <p>3 Q. If you look at paragraph 9, and</p> <p>4 feel free to review it, I'm just trying to</p> <p>5 understand whether or not paragraph 9 is a</p> <p>6 statement of fact, an assumption or an</p> <p>7 opinion?</p> <p>8 MR. BUTLER: Objection to form.</p> <p>9 A. I think it's a statement of fact.</p> <p>10 It's a statement of fact because that, in</p> <p>11 fact, is what the audit committee report says</p> <p>12 and the loans and related party issues are</p> <p>13 not addressed anywhere that I recall in that</p> <p>14 report as being a factor in the audit</p> <p>15 committee's conclusion that revenue</p> <p>16 recognition was improper.</p> <p>17 Q. Is it fair to say that your</p> <p>18 forensic accounting and other claimed</p> <p>19 expertise did not play a role in reaching</p> <p>20 that statement of fact, correct?</p> <p>21 A. In paragraph 9?</p> <p>22 Q. Yes.</p> <p>23 A. That's correct.</p> <p>24 Q. I assume in your view, any</p> <p>25 reasonably intelligent person who could read</p>

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<p>1 D. Larue</p> <p>2 would reach the same statement of fact?</p> <p>3 A. Anybody who could read could see</p> <p>4 that the audit committee said revenue</p> <p>5 recognition was improper for reasons given</p> <p>6 that were unrelated to the bank loans or to</p> <p>7 the related party issues.</p> <p>8 Q. Now, if you look at paragraph 10,</p> <p>9 what Artesia related loan transactions are</p> <p>10 you referring to?</p> <p>11 A. I'm referring to -- I'm certainly</p> <p>12 referring to the Radial loans, the DLIC loans</p> <p>13 and the LDH loans. I don't recall whether or</p> <p>14 not, I believe I did, let me look. Yes,</p> <p>15 paragraph 196 refers to the BTG loan.</p> <p>16 Q. Okay. BTG loan and how much was</p> <p>17 that loan?</p> <p>18 A. I don't recall. The dollar amounts</p> <p>19 are disclosed in paragraph 196, but I see</p> <p>20 it's broken down.</p> <p>21 Q. So paragraph 10 is to a small</p> <p>22 percentage of the overall alleged revenue,</p> <p>23 that includes Radial, LDH, LDF and LIC,</p> <p>24 correct?</p> <p>25 A. Radial, LIC and LDH.</p>	<p>1 D. Larue</p> <p>2 A. This says, for example, if the</p> <p>3 plaintiffs are successful in proving that</p> <p>4 Artesia is liable for the Radial and LIC</p> <p>5 transactions, those loans were 3.2 percent of</p> <p>6 L&H's alleged overstatement of revenues.</p> <p>7 Q. Now, so that does not -- the 3.2</p> <p>8 percent is not the percentage that would be</p> <p>9 the percentage if it was BTG, Radial?</p> <p>10 A. Radial is included.</p> <p>11 Q. LIC and LDF, correct?</p> <p>12 A. That's correct. If you combined</p> <p>13 those amounts, you would end up with a larger</p> <p>14 percentage.</p> <p>15 Q. What percentage would you end up</p> <p>16 with?</p> <p>17 A. I don't know.</p> <p>18 Q. You only took the loan amounts,</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Based upon your asserted expertise</p> <p>22 as an -- in GAAP and GAAS, would L&H have</p> <p>23 been permitted to recognize any revenues from</p> <p>24 LDF absent the loan by Dexia?</p> <p>25 MR. BUTLER: Objection to form.</p>
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<p>1 D. Larue</p> <p>2 Q. And BTG or not BTG?</p> <p>3 A. I believe that statement refers</p> <p>4 more to those three.</p> <p>5 Q. Those three?</p> <p>6 A. I believe so.</p> <p>7 Q. Then why when you get to -- this is</p> <p>8 the summary of conclusions, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. When you -- where is this</p> <p>11 conclusion discussed more fully in the</p> <p>12 section?</p> <p>13 A. It's actually discussed through the</p> <p>14 entirety of section 5 because I believe in</p> <p>15 that section, for the most part, I included</p> <p>16 dollar amounts in each one of these.</p> <p>17 Q. And do you set forth the</p> <p>18 percentage, you say in paragraph 10 that it's</p> <p>19 a small percentage.</p> <p>20 Do you set forth that percentage</p> <p>21 anywhere?</p> <p>22 A. Paragraph 202.</p> <p>23 Q. So the smallest percentage that's</p> <p>24 in paragraph 10 is the 3.2 percent that's set</p> <p>25 forth in 202, is that correct?</p>	<p>1 D. Larue</p> <p>2 A. Permitted by whom?</p> <p>3 Q. GAAP.</p> <p>4 MR. BUTLER: Are you asking if they</p> <p>5 came up with the money in some other</p> <p>6 way, would it be okay?</p> <p>7 MR. HARRIS: No, I'm asking what I</p> <p>8 asked him.</p> <p>9 MR. BUTLER: Let me hear the</p> <p>10 question again.</p> <p>11 (Record read.)</p> <p>12 MR. BUTLER: I object to the form</p> <p>13 of the question.</p> <p>14 A. I don't really understand the</p> <p>15 context of your question.</p> <p>16 Q. All right. Let's see if I can</p> <p>17 help, and perhaps we can turn to Larue</p> <p>18 Exhibit 5 --</p> <p>19 A. I could.</p> <p>20 If you're asking me is it</p> <p>21 permissible for a customer to basically issue</p> <p>22 an account receivable or account payable,</p> <p>23 receivable in L&H in payment of a license,</p> <p>24 yes, it is permissible.</p> <p>25 Q. That's not what I was asking.</p>

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<p>1 D. Larue</p> <p>2 MR. BUTLER: There is clearly some</p> <p>3 confusion over your question.</p> <p>4 Q. Let's turn to Larue Exhibit 5,</p> <p>5 which is your rebuttal report, and I'm</p> <p>6 particularly going to direct your attention</p> <p>7 to page 9 and Exhibit 7-A.</p> <p>8 A. Which is my appendix D.</p> <p>9 Q. You talk about that you do not</p> <p>10 believe the amount of revenue overstatement,</p> <p>11 and I'm looking at paragraph 40, in excess of</p> <p>12 the loan amounts is attributable to the bank.</p> <p>13 Do you see that?</p> <p>14 A. Actually, I don't see it.</p> <p>15 Q. In paragraph 40, the next to last</p> <p>16 sentence.</p> <p>17 A. I see.</p> <p>18 Q. It says, Therefore, I do not</p> <p>19 believe that the amount of revenue</p> <p>20 overstatement in excess of the 30.4 million,</p> <p>21 15.6 million and 20 million in loans in 1997,</p> <p>22 1998 and 1999 respectively is attributable to</p> <p>23 the bank.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>1 D. Larue</p> <p>2 the accuracy of the financial statements is</p> <p>3 management's responsibility, not the bank's</p> <p>4 responsibility, management's responsibility,</p> <p>5 how they report the cash that they received,</p> <p>6 the accounts receivable from the sales of</p> <p>7 these licenses, that's the responsibility of</p> <p>8 management.</p> <p>9 Q. Okay. When you say I do not</p> <p>10 believe the amount of -- in excess of 20</p> <p>11 million is attributable to the bank and what</p> <p>12 I'm trying to understand is what kind of an</p> <p>13 opinion is that, is it a legal opinion or</p> <p>14 what?</p> <p>15 A. Well, they weren't attributable to</p> <p>16 the bank.</p> <p>17 Q. What does that mean, attributable?</p> <p>18 How do you mean attributable?</p> <p>19 A. Well, the bank loans were reported</p> <p>20 as revenue and an additional amount, a</p> <p>21 decision was made by L&H to report an</p> <p>22 additional amount of revenues in the form of</p> <p>23 the accounts receivable.</p> <p>24 Q. What do you mean by attributable?</p> <p>25 A. The bank didn't finance the</p>
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<p>1 D. Larue</p> <p>2 Q. Now, do you disagree with Mr.</p> <p>3 Love's conclusion that L&H overstated</p> <p>4 revenues by more than those amounts in 1997,</p> <p>5 1998 and 1999?</p> <p>6 A. That's my understanding.</p> <p>7 Q. What is your understanding?</p> <p>8 A. That revenues were overstated or at</p> <p>9 least allegedly overstated by amounts greater</p> <p>10 than the amounts you just articulated.</p> <p>11 Q. And, for example, the loan -- let's</p> <p>12 assume that a loan was \$10 million, but they</p> <p>13 booked \$20 million as revenue, 10 in accounts</p> <p>14 receivable, 10 in cash that were the proceeds</p> <p>15 of the loan, the numbers may be different,</p> <p>16 but that is your understanding of what L&H</p> <p>17 did with regard to the LDCs that Dexia</p> <p>18 funded, is that correct?</p> <p>19 A. Yes, it is.</p> <p>20 Q. I'm going to ask you, the first is,</p> <p>21 your opinion that you don't -- you only think</p> <p>22 the loan amount is attributable to the bank,</p> <p>23 is that a legal conclusion?</p> <p>24 A. Let me back up a second.</p> <p>25 First of all, once again, you know,</p>	<p>1 D. Larue</p> <p>2 accounts receivable.</p> <p>3 My understanding is there was no</p> <p>4 expectation that the bank would loan</p> <p>5 additional funds in order for the LDCs to</p> <p>6 payoff the accounts receivable.</p> <p>7 As far as I knew, the bank knew</p> <p>8 nothing about it. They were out of that part</p> <p>9 of the picture.</p> <p>10 Q. As you understand it, that is an</p> <p>11 assumption that you were asked to make as to</p> <p>12 the amount of the loan.</p> <p>13 Now, what I'm trying to understand</p> <p>14 is the context of your use of the term and</p> <p>15 belief about what is and is not attributable</p> <p>16 to Dexia?</p> <p>17 A. The portion of the revenues</p> <p>18 financed by the accounts receivable, it's my</p> <p>19 understanding had nothing to do with the</p> <p>20 bank.</p> <p>21 Q. When you say had nothing to do with</p> <p>22 the bank...</p> <p>23 A. The bank wasn't involved in any way</p> <p>24 or didn't expect to be involved in any way my</p> <p>25 understanding in the payment of those</p>

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<p>1 D. Larue</p> <p>2 accounts receivable.</p> <p>3 Q. But you're not suggesting that as a</p> <p>4 legal matter, that Dexia cannot be held</p> <p>5 liable for more than the amounts of the loan,</p> <p>6 are you?</p> <p>7 A. I'm not saying anything as a legal</p> <p>8 matter. I'm not an attorney, let alone an</p> <p>9 attorney knowledgeable in Belgium law.</p> <p>10 Q. As a factual matter, you only know</p> <p>11 what you've been asked to assume, correct?</p> <p>12 A. What I've been asked to assume has</p> <p>13 been disclosed in my opening report and my</p> <p>14 rebuttal report.</p> <p>15 Q. So really what paragraph 40 says is</p> <p>16 that I was asked to assume that Dexia had</p> <p>17 nothing to do with anything other than the</p> <p>18 amount of the loans, is that what 40 says?</p> <p>19 A. I've been asked to assume that</p> <p>20 Dexia made these loans in these amounts and</p> <p>21 that there was no contemplation or no plan or</p> <p>22 agreement that would have resulted in Dexia</p> <p>23 making additional loans to these LDCs.</p> <p>24 Q. And so that is all an assumption of</p> <p>25 fact that you were asked to make, correct?</p>	<p>1 D. Larue</p> <p>2 through Exhibit D that as a matter of legal</p> <p>3 liability, Dexia should not be held</p> <p>4 responsible for the other Dexia related LDC</p> <p>5 revenues?</p> <p>6 A. I'm not an attorney, I'm not</p> <p>7 opining on any legal issue.</p> <p>8 Q. And you're not doing so as a matter</p> <p>9 of economics, are you?</p> <p>10 MR. BUTLER: Objection to form.</p> <p>11 A. I'm not sure what you mean by that.</p> <p>12 Q. You're not saying they were not</p> <p>13 economically responsible for that, are you?</p> <p>14 You're not opining on anything in this chart?</p> <p>15 MR. BUTLER: Objection to form.</p> <p>16 This chart speaks for itself.</p> <p>17 He can answer the question.</p> <p>18 A. It says, Therefore I do not believe</p> <p>19 that the amount of revenue overstatement in</p> <p>20 excess of 30 million, 15.6 and 20 is</p> <p>21 specifically attributable to the bank.</p> <p>22 Q. And you're not saying that on the</p> <p>23 basis of any analysis or conclusion other</p> <p>24 than you were told to assume that, correct?</p> <p>25 A. Assume what?</p>
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<p>1 D. Larue</p> <p>2 A. Yes.</p> <p>3 Q. And so if you turn to Exhibit D of</p> <p>4 your rebuttal report, am I correct that what</p> <p>5 this does is it takes Mr. Love's Exhibit 7-A</p> <p>6 report and substitutes in the amount of the</p> <p>7 loans that you were told to assume Dexia made</p> <p>8 to certain people?</p> <p>9 A. I believe that's true.</p> <p>10 Once again, I would like to see Mr.</p> <p>11 Love's report, but I'm pretty sure that's</p> <p>12 true.</p> <p>13 Q. You excluded the other amounts from</p> <p>14 Dexia -- of revenue ruled LDCs that Mr. Love</p> <p>15 includes because you were told to assume that</p> <p>16 Dexia had nothing to do with it, correct?</p> <p>17 A. I was -- I assumed that Dexia would</p> <p>18 not be involved or there were no plans for</p> <p>19 Dexia to be involved in the payment of those</p> <p>20 accounts receivable.</p> <p>21 Q. And you assumed that as a matter of</p> <p>22 fact?</p> <p>23 A. It's a factual assumption that I</p> <p>24 assumed in preparing my report, yes, sir.</p> <p>25 Q. You were not attempting to suggest</p>	<p>1 D. Larue</p> <p>2 Q. That --</p> <p>3 A. My factual -- my understanding of</p> <p>4 the facts is that Dexia would not be involved</p> <p>5 in the payment of these accounts receivable.</p> <p>6 I was not asked to assume that that amount of</p> <p>7 revenue overstatement was -- therefore, I do</p> <p>8 not believe that the amount of revenue</p> <p>9 overstatement is attributable to the bank. I</p> <p>10 wasn't asked to assume that. That's my</p> <p>11 opinion.</p> <p>12 Q. Is that opinion based on accounting</p> <p>13 expertise?</p> <p>14 A. It's based on the factual</p> <p>15 assumption that Dexia wouldn't be a part of</p> <p>16 paying off these accounts receivable at any</p> <p>17 point in time in the future.</p> <p>18 Q. When you say it should not --</p> <p>19 A. It's based on that and it's based</p> <p>20 on an accounting issue and that is, again, it</p> <p>21 was management's decision to include not only</p> <p>22 the revenues that they generated from the LDH</p> <p>23 LDCs as revenue when they did, but to also</p> <p>24 include the accounts receivable from the LDH</p> <p>25 LDCs as revenue. That was management's</p>

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<p style="text-align: right;">Page 222</p> <p>1 D. Larue</p> <p>2 decision.</p> <p>3 Q. Based on your assertive expertise</p> <p>4 in auditing standards, do you believe that</p> <p>5 KPMG would have allowed L&H to recognize the</p> <p>6 accounts receivable as a revenue if L&H had</p> <p>7 not gotten the cash portion when it did?</p> <p>8 MR. BUTLER: Objection to form.</p> <p>9 A. Are we assuming the same total</p> <p>10 amount of revenue?</p> <p>11 Q. Uh-huh.</p> <p>12 A. So basically we're talking about</p> <p>13 instead of having a smaller account</p> <p>14 receivable, we have a larger account</p> <p>15 receivable.</p> <p>16 Q. And no cash?</p> <p>17 A. And no cash.</p> <p>18 Q. Correct.</p> <p>19 A. SOP 97-2 requires an assessment as</p> <p>20 to whether or not the amounts to be received</p> <p>21 under this licensing agreement meet certain</p> <p>22 criteria.</p> <p>23 Are those amounts fixed and</p> <p>24 determinable and is collection probable, KPMG</p> <p>25 would normally -- an auditor would normally</p>	<p style="text-align: right;">Page 224</p> <p>1 D. Larue</p> <p>2 to make a determination that the collection</p> <p>3 was probable.</p> <p>4 Q. And it is possible, is it not, that</p> <p>5 but for the amounts that Dexia loaned in the</p> <p>6 Dexia related LDCs that ultimately ended up</p> <p>7 in cash in L&H, that KPMG would not have</p> <p>8 permitted L&H to recognize any revenues from</p> <p>9 the Dexia related LDCs?</p> <p>10 MR. BUTLER: Objection to form.</p> <p>11 A. Anything is possible.</p> <p>12 Q. You don't have an opinion really</p> <p>13 one way or the other?</p> <p>14 A. I don't have the facts and</p> <p>15 circumstances available to me to know what</p> <p>16 information KPMG might or did have available</p> <p>17 to them in testing the accounts receivable.</p> <p>18 Q. If we turn back to paragraph 40 of</p> <p>19 your rebuttal report, I'm just trying to</p> <p>20 understand what the 30.4 million for 1997</p> <p>21 represents, what loans are those that you've</p> <p>22 assumed?</p> <p>23 A. The '97 loan, would that be BTG, I</p> <p>24 believe. I think that's the BTG loan. Yes,</p> <p>25 that appears to be the BTG loan and it</p>
<p style="text-align: right;">Page 223</p> <p>1 D. Larue</p> <p>2 go out and perform whatever tests the auditor</p> <p>3 deemed necessary to make an assessment as to</p> <p>4 whether or not the collection of the accounts</p> <p>5 receivable was probable and if and to the</p> <p>6 extent not required either a non-recognition</p> <p>7 of that revenue until collection became</p> <p>8 probable or to require the establishment of a</p> <p>9 reserve for bad debts.</p> <p>10 Q. I understand how KPMG would have</p> <p>11 gone about it. My question was different.</p> <p>12 Do you have an opinion as to</p> <p>13 whether or not KPMG would have allowed L&H to</p> <p>14 recognize any of the revenue from the Dexia</p> <p>15 related LDCs if L&H had not gotten the Dexia</p> <p>16 cash when it did?</p> <p>17 MR. BUTLER: Objection to form.</p> <p>18 A. I don't know. These are management</p> <p>19 representations, KPMG what kind of</p> <p>20 information would they have done to try to</p> <p>21 determine collectability.</p> <p>22 Q. That's not what I asked.</p> <p>23 Do you want the question read back?</p> <p>24 A. No. I don't know what kind of</p> <p>25 information would have been available to them</p>	<p style="text-align: right;">Page 225</p> <p>1 D. Larue</p> <p>2 appears to not include any amount from the</p> <p>3 Dictation Consortium loan.</p> <p>4 MR. HARRIS: Shall we take a break.</p> <p>5 THE VIDEOGRAPHER: We are going off</p> <p>6 the record at 3:26 p.m. on tape No. 1.</p> <p>7 (Recess.)</p> <p>8 THE VIDEOGRAPHER: We're going back</p> <p>9 on the record. The time is 3:39. This</p> <p>10 is tape No. 4.</p> <p>11 Q. If we could return, Mr. Larue, if</p> <p>12 we could return to your report. I would like</p> <p>13 to direct your attention to the section in</p> <p>14 which you discuss special purpose entities</p> <p>15 and I believe that is section 3.</p> <p>16 I believe that you earlier said</p> <p>17 that the LDCs have many of the</p> <p>18 characteristics of a special purpose entity,</p> <p>19 is that correct?</p> <p>20 A. I predicated that statement by</p> <p>21 pointing out, as I've done in my report,</p> <p>22 there is no offerings definition of an SPE in</p> <p>23 the accounting literature, so in answering</p> <p>24 your question in general terms, the way these</p> <p>25 have been described here, that the LDCs</p>

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<p>1 D. Larue</p> <p>2 appear to have had several of the</p> <p>3 characteristics, yes.</p> <p>4 Q. Are there any characteristics of a</p> <p>5 special purpose entity which must be present</p> <p>6 for an entity to qualify as a special purpose</p> <p>7 entity?</p> <p>8 A. Again, there is no definition of a</p> <p>9 special purpose entity under GAAP.</p> <p>10 Q. As you used the term.</p> <p>11 A. You're actually using the term in</p> <p>12 your question to qualify for a special</p> <p>13 purpose entity and my question back to you is</p> <p>14 for what purpose?</p> <p>15 Q. For the purpose of your report.</p> <p>16 A. I've described in my report some of</p> <p>17 the characteristics that appear from the</p> <p>18 literature to be present with respect to what</p> <p>19 many people refer to as a special purpose</p> <p>20 entity.</p> <p>21 Q. And one characteristic is a</p> <p>22 sponsor, correct?</p> <p>23 A. That's a characteristic, yes.</p> <p>24 Q. Do you have information that the</p> <p>25 LDCs had any sponsors, as that term is used</p>	<p>1 D. Larue</p> <p>2 sometimes a corporation is created before it</p> <p>3 actually has shareholders.</p> <p>4 Q. And so an SPE is created by</p> <p>5 somebody, correct, that you term a sponsor?</p> <p>6 A. Yes, I've used that term in this</p> <p>7 report, yes.</p> <p>8 Q. And all corporations are created by</p> <p>9 somebody, correct?</p> <p>10 A. By some breathing human being,</p> <p>11 yes -- well, actually, that's not true.</p> <p>12 Corporations can create other corporations,</p> <p>13 so, yes, corporations are created by</p> <p>14 somebody.</p> <p>15 Q. And you say SPEs have no purpose</p> <p>16 other than the transactions for which they</p> <p>17 were created.</p> <p>18 What does that mean?</p> <p>19 A. It means that generally, unlike a</p> <p>20 regular ongoing business with multiple</p> <p>21 operations and day in and day out operations,</p> <p>22 it's my understanding when people refer to an</p> <p>23 SPE, they typically are referring to an</p> <p>24 entity that is designed, preordained,</p> <p>25 actually, to do one thing. It may be</p>
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<p>1 D. Larue</p> <p>2 on page 12 of your report?</p> <p>3 A. Again, this deals not with the</p> <p>4 facts of this case, but just a general</p> <p>5 description of SPE.</p> <p>6 Q. I understand.</p> <p>7 A. Do I have any information of who</p> <p>8 might be a sponsor?</p> <p>9 Q. Not who. Whether or not the LDCs</p> <p>10 had a sponsor, as the term sponsor is used on</p> <p>11 page 12 in your report?</p> <p>12 A. It's my understanding that these</p> <p>13 entities were created by -- not by L&H, not</p> <p>14 by the shareholders of L&H or officers of</p> <p>15 L&H, but, rather, were created by independent</p> <p>16 investors, third party investors.</p> <p>17 Q. And the third party investors then</p> <p>18 would be the sponsors of the SPE?</p> <p>19 A. I put that in parenthesis here. I</p> <p>20 described the party creating the SPE as a</p> <p>21 sponsor.</p> <p>22 Q. And all corporations are created,</p> <p>23 correct, by their investors?</p> <p>24 A. All corporations are created,</p> <p>25 oftentimes it's my understanding that</p>	<p>1 D. Larue</p> <p>2 leasing, I might be the lessor of the</p> <p>3 equipment to the lessee. And I'm not running</p> <p>4 a business, I am not doing anything else, I'm</p> <p>5 just leasing these assets to a particular</p> <p>6 lessee, so the scope is much more narrow than</p> <p>7 you would find if somebody started up an</p> <p>8 active trader business.</p> <p>9 Q. When you say no purpose other than</p> <p>10 the transactions as for which they were</p> <p>11 created, those are set forth in the SPE's</p> <p>12 governing documents?</p> <p>13 A. I don't know that's the case. It</p> <p>14 may be there is a contract or -- I don't</p> <p>15 know, I guess, you know, the purpose could be</p> <p>16 established and the documents creating the</p> <p>17 entity or by contract with another party.</p> <p>18 Q. Is Microstrategy the corporation of</p> <p>19 which you are a director, a special purpose</p> <p>20 entity, as you use that phrase in your</p> <p>21 report?</p> <p>22 A. No, sir.</p> <p>23 Q. Does it do anything other than sell</p> <p>24 software?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">Page 230</p> <p>1 D. Larue</p> <p>2 Q. It does.</p> <p>3 What else does it do?</p> <p>4 A. It develops software, updates the</p> <p>5 software, conducts training sessions,</p> <p>6 provides consulting services.</p> <p>7 Microstrategy has a lot of</p> <p>8 employees around the world.</p> <p>9 Q. Do you have any facts that suggest</p> <p>10 that the LDCs did not have the power or the</p> <p>11 authority to do everything that Microstrategy</p> <p>12 does?</p> <p>13 MR. BUTLER: I object to the form</p> <p>14 of the question.</p> <p>15 A. No.</p> <p>16 Q. Now, when you say that the LDCs did</p> <p>17 have certain characteristics that -- of a</p> <p>18 special purpose entity, as you used that term</p> <p>19 in your report, please identify every</p> <p>20 characteristic of the LDCs that it had that</p> <p>21 Microstrategy does not have?</p> <p>22 MR. BUTLER: I object to the form</p> <p>23 of the question.</p> <p>24 A. It's my understanding the LDCs did</p> <p>25 not have any employees. At the time that</p>	<p style="text-align: right;">Page 232</p> <p>1 D. Larue</p> <p>2 Q. It does?</p> <p>3 A. Yes.</p> <p>4 Q. Which ones? Identify them for me,</p> <p>5 please.</p> <p>6 A. When you take a limited liability</p> <p>7 company that's actively engaged in a trader</p> <p>8 business and it decides to incorporate those</p> <p>9 operations, the corporation is something</p> <p>10 that -- the corporation is a new legal</p> <p>11 entity, but it relates to the same business,</p> <p>12 the business operations are ongoing.</p> <p>13 Q. Mr. Larue, is it -- is the</p> <p>14 characteristic of a special purpose entity</p> <p>15 that it has no employees throughout its</p> <p>16 existence?</p> <p>17 A. I don't think I said that here.</p> <p>18 Q. I'm asking you.</p> <p>19 A. What I do think is that you might</p> <p>20 start off as what most people would consider</p> <p>21 to be or some people would consider to be a</p> <p>22 special purpose entity and evolve into</p> <p>23 something else.</p> <p>24 Q. Is it your understanding that the</p> <p>25 LDCs from the time they were created intended</p>
<p style="text-align: right;">Page 231</p> <p>1 D. Larue</p> <p>2 these revenues were recognized, what happened</p> <p>3 to them later, I have no idea.</p> <p>4 Q. Holding companies often have no</p> <p>5 employees, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Are they special purpose entities?</p> <p>8 A. No. They wouldn't generally be</p> <p>9 considered to be special purpose entities.</p> <p>10 Q. What other characteristics did the</p> <p>11 LDCs have of a special purpose entity, as you</p> <p>12 use that term in your report?</p> <p>13 A. My understanding is that they had</p> <p>14 limited or no active trader business</p> <p>15 operations.</p> <p>16 Q. At what point in time?</p> <p>17 A. At the time referenced in my report</p> <p>18 during that period of time.</p> <p>19 Q. When they were created?</p> <p>20 A. When they were created.</p> <p>21 Q. Does any corporation have active</p> <p>22 trade or business at the time its created?</p> <p>23 A. At the instant of its creation?</p> <p>24 Q. Yes.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 233</p> <p>1 D. Larue</p> <p>2 to have employees?</p> <p>3 A. Again, you're asking me the</p> <p>4 intention of the people who basically formed</p> <p>5 and then managed those entities. I can't</p> <p>6 speak to their intention.</p> <p>7 The other thing I would comment is,</p> <p>8 once again, you're getting into, we have 13</p> <p>9 LDCs here, it's my understanding that over a</p> <p>10 period of time, the facts and circumstances</p> <p>11 may have changed, the plans may have changed,</p> <p>12 I don't know.</p> <p>13 Q. Did the license agreements with L&H</p> <p>14 of the Dexia related LDCs, were they</p> <p>15 identical in substance?</p> <p>16 A. You mean the terms of the licensing</p> <p>17 agreement, not the dollar amounts, of course?</p> <p>18 Q. Yes.</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know.</p> <p>21 Let me hand you a document that we</p> <p>22 will mark as Larue Exhibit 6?</p> <p>23 (Document dated September 29, 1998</p> <p>24 marked Larue Exhibit 6 for</p> <p>25 identification.)</p>

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<p>1 D. Larue</p> <p>2 Q. And I will represent to you that</p> <p>3 this is the agreement between the Slavic</p> <p>4 Development Company and Lernout and Hauspie</p> <p>5 Speech Products, NV dated September 29, 1998.</p> <p>6 MR. BUTLER: I can't agree with</p> <p>7 that representation because there has</p> <p>8 been no evidence about this document in</p> <p>9 this case.</p> <p>10 Q. Have you ever seen this document</p> <p>11 before?</p> <p>12 A. My records show I haven't seen this</p> <p>13 document with either one of these Bates</p> <p>14 numbers and I don't recall seeing this</p> <p>15 document.</p> <p>16 Q. I believe your earlier testimony</p> <p>17 was that you did not review, prior to</p> <p>18 submission of either of your reports, any of</p> <p>19 the agreements between the Dexia related LDCs</p> <p>20 and L&H, correct?</p> <p>21 A. Say that again.</p> <p>22 (Record read.)</p> <p>23 A. I didn't have access to any</p> <p>24 documents between L&H and Dexia, I didn't</p> <p>25 review them.</p>	<p>1 D. Larue</p> <p>2 Q. Did you ask?</p> <p>3 A. I did not.</p> <p>4 Q. I take it that's because you</p> <p>5 believed that the contents of those</p> <p>6 agreements were not important for your</p> <p>7 opinions, correct?</p> <p>8 A. No.</p> <p>9 Q. No?</p> <p>10 A. No.</p> <p>11 Q. If you thought they were important,</p> <p>12 why didn't you ask for them?</p> <p>13 A. I was asked to assume certain</p> <p>14 factual aspects of these documents, which I</p> <p>15 did assume, I thought that was important for</p> <p>16 me to actually read through these documents,</p> <p>17 not being an attorney, among other things, I</p> <p>18 didn't consider to be important as long as</p> <p>19 that fact was fully disclosed in my report.</p> <p>20 Q. I would like to direct your</p> <p>21 attention to page 3 of the agreement.</p> <p>22 A. I'm there.</p> <p>23 Q. It says there that development by</p> <p>24 the company of the products and in paragraph</p> <p>25 2.3-B, Roman I, it says, The company shall be</p>
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<p>1 D. Larue</p> <p>2 Q. When you say you didn't have</p> <p>3 access, what do you mean?</p> <p>4 A. You are asking me before I was</p> <p>5 engaged?</p> <p>6 Q. Before you submitted either of your</p> <p>7 reports.</p> <p>8 A. Did I review this agreement?</p> <p>9 Q. Let me make sure the question is</p> <p>10 clear.</p> <p>11 Prior to the submission of each of</p> <p>12 your reports, it is true, is it not, that you</p> <p>13 did not review any agreement between a Dexia</p> <p>14 related LDC and L&H?</p> <p>15 A. I don't recall that I reviewed any</p> <p>16 such document.</p> <p>17 Q. And they were available to you,</p> <p>18 correct?</p> <p>19 MR. BUTLER: Objection to form.</p> <p>20 A. Yes, I assume they were.</p> <p>21 Q. But you didn't ask for them,</p> <p>22 correct?</p> <p>23 A. I shouldn't assume that they were.</p> <p>24 I don't know what documents would have been</p> <p>25 available to me had I asked.</p>	<p>1 D. Larue</p> <p>2 responsible for the hiring of qualified</p> <p>3 personnel.</p> <p>4 A. I see that.</p> <p>5 Q. Do you have any reason to believe</p> <p>6 that Slavic Development Company was not</p> <p>7 responsible for hiring qualified personnel to</p> <p>8 perform its obligations under the agreement</p> <p>9 it had with L&H?</p> <p>10 MR. BUTLER: Objection to form.</p> <p>11 A. First of all, I don't know what</p> <p>12 obligations you're referring to.</p> <p>13 Q. Did it have any obligations?</p> <p>14 A. Who?</p> <p>15 Q. The LDC.</p> <p>16 MR. BUTLER: Objection to form.</p> <p>17 A. I don't know.</p> <p>18 Q. You don't know one way or the</p> <p>19 other?</p> <p>20 A. This is a lengthy document. Who</p> <p>21 are you talking about in terms of the</p> <p>22 company? Who is the company? The agreement</p> <p>23 between Slavic Development Company -- I think</p> <p>24 I understand.</p> <p>25 Would you ask your question again.</p>

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<p>1 D. Larue</p> <p>2 Q. Sure.</p> <p>3 Do you have any reason to believe</p> <p>4 that Slavic Development Company was not</p> <p>5 responsible for the hiring of qualified</p> <p>6 personnel to fulfill Slavic Development</p> <p>7 Company's obligations to L&H?</p> <p>8 A. I can't. This is a lengthy</p> <p>9 document. I would have to study that to make</p> <p>10 an opinion about that. I don't know what</p> <p>11 responsibilities the Slavic Company did or</p> <p>12 did not have to Dexia -- I mean to L&H.</p> <p>13 Q. Now, we were talking about -- let's</p> <p>14 talk about the Slavic Development Company.</p> <p>15 What characteristics did it have</p> <p>16 that were consistent with a special purpose</p> <p>17 entity, as you used that term in your report?</p> <p>18 A. I don't know that much about that</p> <p>19 specific company.</p> <p>20 Q. Do you have -- do you know whether</p> <p>21 or not Slavic Development Company had any</p> <p>22 characteristic of a special purpose entity,</p> <p>23 as you used that term in your report?</p> <p>24 A. Do I know for a factual certainty,</p> <p>25 no.</p>	<p>1 D. Larue</p> <p>2 other.</p> <p>3 Q. And so you don't know whether or</p> <p>4 not the accounting treatment for special</p> <p>5 purpose entities have any relevance to the</p> <p>6 Dexia related LDCs, correct?</p> <p>7 A. That's not correct. That's what my</p> <p>8 report largely is all about, is talking about</p> <p>9 what the accounting standards are as they</p> <p>10 apply to certain entities with certain</p> <p>11 characteristics and how those compared with</p> <p>12 the characteristics that I factually assumed</p> <p>13 in preparing my report.</p> <p>14 Q. Well, I understand that, but what</p> <p>15 I'm really asking is something different.</p> <p>16 You are not prepared to opine that</p> <p>17 the accounting for special purpose entities</p> <p>18 had any relationship to the Dexia related</p> <p>19 LDCs as they, in fact, existed, correct?</p> <p>20 A. No. I describe in section 3</p> <p>21 accounting principles that are generally</p> <p>22 applicable, not just necessarily to SPEs. I</p> <p>23 applied those principles to the factual</p> <p>24 assumptions I made in section 4.</p> <p>25 Q. Let me keep --</p>
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<p>1 D. Larue</p> <p>2 Q. Do you know if any LDC had any</p> <p>3 characteristic of a special purpose entity,</p> <p>4 as you used that term in your report?</p> <p>5 A. Do I know for a factual certainty?</p> <p>6 No, I don't.</p> <p>7 Q. When you say, factual certainty,</p> <p>8 what do you mean?</p> <p>9 A. You're asking me to basically look</p> <p>10 at the facts surrounding these LDCs and try</p> <p>11 to determine whether or not those facts match</p> <p>12 up with the way I've described an SPE in</p> <p>13 section 3 of my report.</p> <p>14 Q. So you are not prepared to offer</p> <p>15 any opinion at trial that any of the LDCs</p> <p>16 were, in fact, SPEs, correct?</p> <p>17 A. I made certain assumptions about</p> <p>18 some of the characteristics of the LDCs</p> <p>19 generally and I've disclosed those</p> <p>20 assumptions in my report.</p> <p>21 Q. Do you conclude in your report that</p> <p>22 any of the LDCs were special purpose</p> <p>23 entities, as you used that term in your</p> <p>24 report?</p> <p>25 A. I don't conclude one way or the</p>	<p>1 D. Larue</p> <p>2 A. If I could, let me make it very</p> <p>3 clear that GAAP, prior to a recent 2003</p> <p>4 announcement which still doesn't refer to</p> <p>5 SPEs, didn't have a rule that said if you're</p> <p>6 an SPE and here is how we define an SPE, then</p> <p>7 here are all of the accounting principles</p> <p>8 that are going to apply to you.</p> <p>9 In other words, once you make a</p> <p>10 determination you are or not -- that you are</p> <p>11 an SPE, then there is this whole basketful of</p> <p>12 accounting principles that now apply to you</p> <p>13 that would not have applied before.</p> <p>14 Accounting principles don't define an SPE and</p> <p>15 pull out the accounting principles that will</p> <p>16 always be applied once the determination is</p> <p>17 made that you are an SPE.</p> <p>18 The accounting principles I</p> <p>19 described in section 3 of my report are</p> <p>20 accounting principles that deal with</p> <p>21 consolidation issues related party</p> <p>22 transactions and so forth, to the extent</p> <p>23 those are applicable to the facts that I've</p> <p>24 assumed in this case, I have applied them.</p> <p>25 Q. Now, let me try my question again</p>

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<p style="text-align: right;">Page 242</p> <p>1 D. Larue</p> <p>2 because, clearly, we're not doing so well in</p> <p>3 terms of me making my question clear or you</p> <p>4 hearing it.</p> <p>5 Do you have my prior question in</p> <p>6 mind?</p> <p>7 A. You better ask me again.</p> <p>8 Q. You don't, is that right?</p> <p>9 A. Would you ask me again, please.</p> <p>10 Q. Do you have in mind the question</p> <p>11 that you just purported to answer?</p> <p>12 MR. BUTLER: I don't understand</p> <p>13 this.</p> <p>14 Can you just reread the question so</p> <p>15 we all have it if mind.</p> <p>16 MR. HARRIS: No, she can't.</p> <p>17 Can you answer my question.</p> <p>18 MR. BUTLER: You are asking if he</p> <p>19 has it in mind again. He just answered</p> <p>20 the question.</p> <p>21 Q. Can you answer the question.</p> <p>22 A. I thought I did answer the</p> <p>23 question.</p> <p>24 Q. Do you have the question in mind</p> <p>25 that you just answered?</p>	<p style="text-align: right;">Page 244</p> <p>1 D. Larue</p> <p>2 Are there any accounting principles</p> <p>3 set forth in section 3 that are not</p> <p>4 applicable to non-special purpose entities</p> <p>5 and by non-special purpose entities, I mean</p> <p>6 an entity that is not a special purpose</p> <p>7 entity, as you describe that term?</p> <p>8 A. I believe most of the discussion in</p> <p>9 section 3 deals with accounting principles</p> <p>10 that are applicable to all 10 practices.</p> <p>11 Q. Is there any accounting principal</p> <p>12 set forth or discussed in section 3 of your</p> <p>13 report that is not applicable to</p> <p>14 Microstrategy?</p> <p>15 A. By applicable, do you mean</p> <p>16 literally applicable to Microstrategy or do</p> <p>17 you mean to entities like Microstrategy?</p> <p>18 Q. I mean applicable to Microstrategy.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Which ones?</p> <p>21 A. As disclosed in its public</p> <p>22 statements, Microstrategy doesn't have any</p> <p>23 related party issues, so those rules are</p> <p>24 inapplicable that they have not had to be</p> <p>25 applied to the facts and circumstances</p>
<p style="text-align: right;">Page 243</p> <p>1 D. Larue</p> <p>2 MR. BUTLER: I object to the</p> <p>3 question.</p> <p>4 You can answer to the best of your</p> <p>5 ability.</p> <p>6 A. You asked me about accounting</p> <p>7 principles for SPEs and whether or not</p> <p>8 accounting principles for SPEs were</p> <p>9 applicable to the LDCs.</p> <p>10 Q. As they existed in fact.</p> <p>11 A. As they existed in fact and based</p> <p>12 on the factual assumptions that I made in my</p> <p>13 report.</p> <p>14 Q. That was not my question.</p> <p>15 MR. BUTLER: Maybe you should reask</p> <p>16 your question.</p> <p>17 Q. Maybe you should listen to my</p> <p>18 question better.</p> <p>19 MR. BUTLER: Just a moment. Don't</p> <p>20 lecture the witness. He is trying to</p> <p>21 answer your questions, please.</p> <p>22 MR. HARRIS: We can obviously</p> <p>23 disagree about lots of things.</p> <p>24 Q. Let me make sure it is clear. Let</p> <p>25 me ask another question first.</p>	<p style="text-align: right;">Page 245</p> <p>1 D. Larue</p> <p>2 related to Microstrategy in its operations</p> <p>3 since I've been a member of the board of</p> <p>4 directors.</p> <p>5 Q. Let me then, perhaps you didn't</p> <p>6 understand what I meant by applicable, given</p> <p>7 your answer.</p> <p>8 Are there any accounting principles</p> <p>9 or rules set forth in section 3 with which</p> <p>10 Microstrategy does not need to comply?</p> <p>11 A. But for possible changes since the</p> <p>12 years at issue here, these rules are</p> <p>13 applicable to public companies like</p> <p>14 Microstrategy, if their circumstances require</p> <p>15 the application of those principles.</p> <p>16 Q. So all of the accounting principles</p> <p>17 set forth in section 3 are applicable to</p> <p>18 entities which are not special purpose</p> <p>19 entities, correct?</p> <p>20 A. What I've described in this section</p> <p>21 is generally accepted accounting principles</p> <p>22 for purposes that are required to comply with</p> <p>23 generally accepted accounting principles,</p> <p>24 these rules would apply.</p> <p>25 Q. And so the title could also be for</p>

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<p>1 D. Larue 2 accounting -- entity which need to comply 3 with generally accepted accounting 4 principles, correct? 5 MR. BUTLER: Is this about debating 6 the title of section 3, sorry, can you 7 answer the question. 8 A. The title could be whatever I 9 wanted it to be, the title -- 10 Q. You wanted it to be special purpose 11 entities to suggest that special purpose 12 entities had some relevance to this case, but 13 then you didn't identify anything in here 14 that was solely related to special purpose 15 entities, correct? 16 MR. BUTLER: Objection to form. 17 A. Many of the principles that would 18 normally be applied to a special purpose 19 entity would be applied in the context of the 20 LDCs, but I could have -- that title could 21 have been accounting for -- relevant 22 accounting principles for publicly traded 23 companies or companies complying with GAAP. 24 Q. Those same principles that would be 25 applicable to special purpose entities would</p>	<p>1 D. Larue 2 Q. As a factual matter, you do not 3 know one way or the other whether or not 4 Lernout and Hauspie's principles were able to 5 and did control or significantly influence 6 the management or operating policy of the 7 Dexia related LDCs to the extent that one of 8 the transacting parties might be prevented 9 from fully pursuing its own special 10 interests, correct? 11 A. That's correct. I don't know that, 12 but what I do know is or what I believe I 13 know, what I've been asked to factually 14 assume is that the principals of L&H did not 15 hold equity interests in the LDCs directly or 16 indirectly that those equity interests 17 represented a stake by unrelated parties. 18 Q. But it doesn't talk in terms of 19 holding equity interests, does it? It talks 20 in terms of controls or could significantly 21 influence the management or operating 22 policies, correct? 23 A. Yes, it does. That's relevant. I 24 mean, that fact is relevant to determining 25 the likelihood, I suppose, that unrelated</p>
Page 247	Page 249
<p>1 D. Larue 2 be applicable to non-special purpose 3 entities, correct? 4 MR. BUTLER: Objection. Asked and 5 answered. 6 You can answer again. 7 A. To the extent described in this, 8 yes. 9 Q. And so -- let's then turn to page 10 16 of your report where you quote a portion 11 of FAS 57, correct? 12 A. Yes, sir. 13 Q. And it indicates that a party is 14 related to another party if it controls or 15 can significantly influence the management or 16 operating policies of the other to an extent 17 that one of the transacting parties might be 18 prevented from fully pursuing its own 19 separate interests, correct? 20 A. That's what it says, yes. 21 Q. And that is a recognized general 22 accounting principle, correct? 23 A. This is a quote from FAS 57, yes, 24 it's a generally accepted accounting 25 principles.</p>	<p>1 D. Larue 2 independent investors that have their own 3 money at stake would permit the principals of 4 L&H to do things that were not in the best 5 interest of the investors. It goes to the 6 issue of significance. 7 Q. Let me make sure I understand. 8 You're not suggesting that the 9 definition of related parties that we've just 10 looked at is limited to parties who hold an 11 equity interest in another, are you? 12 A. No, sir. 13 Q. Because it would be very easy for 14 the financial accounting standings board to 15 have used those words, that holds an equity 16 interest, correct? 17 A. That's correct. 18 Q. But they chose not to, correct? 19 A. Under FAS 57, for the purposes of 20 disclosure set forth in 57, yes, for other 21 purposes we do look at equity interests, but 22 not here. 23 Q. But not here? 24 A. Yes, sir. 25 Q. Right. And the financial</p>

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<p>1 D. Larue 2 accounting standing boards, therefore, does 3 know how to use the term equity interest and 4 when they use something else, they mean 5 something else, correct? 6 MR. BUTLER: Object to the form. I 7 don't understand this whole line. 8 MR. HARRIS: That's why you're 9 still litigating the case. 10 MR. BUTLER: This says principal 11 owners of the enterprise, this rule does 12 apply to equity interest, it's right 13 there on the page. 14 Q. It applies to the principal owners 15 of L&H like Mr. Lernout and Hauspie, but they 16 don't have to have an equity interest in the 17 LDCs to significantly control their 18 management or policies, correct, Mr. Larue? 19 MR. BUTLER: Object to the form. 20 A. I believe that's correct and I 21 believe I stated that in my report elsewhere. 22 Q. If you look at page 17, you refer 23 to SEC Regulation S-X, Section 210.4-08-K, 24 correct? 25 A. Yes, sir.</p>	<p>1 D. Larue 2 A. Not the quoted statements here. 3 The quoted statements, Related party 4 transactions should be identified in the 5 amounts stated on the face of the balance 6 sheet income statement or statement of cash 7 flows. 8 Q. And the SEC does not limit those 9 related party transactions which should be 10 identified to material party transactions, 11 correct? 12 A. The materiality threshold under 13 this -- wait -- not in this quoted section, 14 the SEC generally states that transactions 15 have to be disclosed if they are material. 16 There is an overarching requirement. 17 Q. Let me make sure I understand the 18 testimony. 19 Are you testifying that related 20 party transactions should be identified 21 really means material related party 22 transactions should be identified, is that 23 your testimony? 24 A. Under GAAP, you normally don't -- 25 Q. I didn't ask about GAAP. I'm</p>
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<p>1 D. Larue 2 Q. Is this the same SEC whose 3 complaint we saw against Lernout and Hauspie 4 earlier today? 5 MR. BUTLER: Objection to the form. 6 A. It is the SEC. 7 Q. The same one? 8 A. The United States SEC. 9 Q. They set accounting standards, 10 don't they? 11 MR. BUTLER: Objection to form. 12 A. They do not set accounting 13 standards, the FASB and AICPA sets accounting 14 standards. The SEC also sets accounting 15 standards. They are not the sole body that 16 sets accounting standards. 17 Q. One of the SEC's jobs is to set 18 accounting standards, correct? 19 A. That's correct. 20 Q. Now, section -- in paragraph 47, 21 you quote a portion of that Regulation S-X, 22 210.4-08-K, correct? 23 A. Yes, sir. 24 Q. It talks about which related party 25 transactions should be identified, correct?</p>	<p>1 D. Larue 2 talking about SEC regulation -- 3 MR. BUTLER: Please don't interrupt 4 the witness. Do not talk over me. I am 5 asking you as a courtesy not to 6 interrupt the witness. Now please ask 7 the question. 8 A. Under GAAP disclosure is not 9 normally required for immaterial items. 10 Q. I was asking what the SEC imposes. 11 You say they impose additional requirements 12 for reporting related party transactions, is 13 that correct? 14 A. Yes, I do. 15 Q. Is one of the additional 16 requirements that the SEC imposes set forth 17 in paragraph 47 of your report? 18 A. Yes. 19 Q. Is that additional requirement for 20 reporting related party transactions set 21 forth in paragraph 47 limited to material 22 party transactions? 23 A. I would have to check to be sure. 24 Q. You don't know one way or the 25 other?</p>

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<p>1 D. Larue</p> <p>2 A. I think it is limited to material</p> <p>3 transactions. I know in Regulation S-K,</p> <p>4 which I have referenced in the next</p> <p>5 paragraph, materiality is actually defined by</p> <p>6 the SEC with the \$60,000 amount that they</p> <p>7 referred to there.</p> <p>8 Q. And the SEC sometimes uses the term</p> <p>9 material, correct?</p> <p>10 A. Yes.</p> <p>11 Q. But they didn't use it in</p> <p>12 section -- in Regulation S-X, Section</p> <p>13 210.4-08-K, correct?</p> <p>14 A. There may be other components to</p> <p>15 that, I don't know that I cited the whole</p> <p>16 thing, but certainly from the quoted</p> <p>17 statements in my report, they don't use the</p> <p>18 word material in that statement.</p> <p>19 Now, as with FASB statements, there</p> <p>20 is an overarching rule that says these</p> <p>21 statements are not intended to be applied in</p> <p>22 all circumstances where the dollar amounts</p> <p>23 are immaterial. It's an overarching thing</p> <p>24 that may not be stated in every single FASB</p> <p>25 statement and it's stated once, it applies to</p>	<p>1 D. Larue</p> <p>2 accepted accounting principles except as</p> <p>3 modified or appended by the SEC.</p> <p>4 Q. Mr. Larue, I think I understand</p> <p>5 that it's your testimony that the SEC just</p> <p>6 omitted a word that you feel is applicable.</p> <p>7 I understand.</p> <p>8 A. I'm just trying to answer your</p> <p>9 question.</p> <p>10 Q. It really should read material</p> <p>11 related transaction. I understand.</p> <p>12 MR. BUTLER: So ask another</p> <p>13 question, please.</p> <p>14 Q. Let's move on to paragraph 48 in</p> <p>15 which you quote a portion of Regulation S-X,</p> <p>16 Section 229.404.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It says, Describe briefly any</p> <p>20 transaction or series of similar transaction</p> <p>21 in which the registrant was or is to be a</p> <p>22 party in which the amount involved exceeds</p> <p>23 \$60,000 and in which any of the following</p> <p>24 persons had or will have a direct or indirect</p> <p>25 material interest.</p>
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<p>1 D. Larue</p> <p>2 all of the FASB statements unless specified</p> <p>3 otherwise, so it applies in the context of</p> <p>4 those FASB statements.</p> <p>5 I just don't recall from memory.</p> <p>6 This is a long regulation. I don't recall if</p> <p>7 there is any special rule that would say any</p> <p>8 and all related party transactions must be</p> <p>9 identified or own the material. Normally, it</p> <p>10 would be only the material. I can't tell you</p> <p>11 without going back and looking at this</p> <p>12 regulation and probably other regulations, as</p> <p>13 well.</p> <p>14 Q. Just so we're clear, the FASB</p> <p>15 overarching rule of materiality has no</p> <p>16 applicability to SEC regulations, correct?</p> <p>17 A. It certainly does have</p> <p>18 applicability to SEC regulations.</p> <p>19 Q. It does?</p> <p>20 A. SEC basically says that</p> <p>21 pronouncements that are considered to be</p> <p>22 authoritative GAAP are going to be part of</p> <p>23 their regulations.</p> <p>24 Basically, the SEC allows the</p> <p>25 private sector to promulgate generally</p>	<p>1 D. Larue</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Then you then quote the following</p> <p>5 definition of following persons, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And the following persons include</p> <p>8 the directors of executive officers of the</p> <p>9 registrants, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So as you understand it, the SEC</p> <p>12 Regulation S-X, 229.404 applies to you as a</p> <p>13 director of Microstrategy, correct?</p> <p>14 A. Absolutely.</p> <p>15 Q. Now, it also talks about an</p> <p>16 indirect material interest.</p> <p>17 What is an indirect material</p> <p>18 interest?</p> <p>19 A. They don't define it.</p> <p>20 Q. I'm asking you as an expert.</p> <p>21 A. What do they mean by indirect</p> <p>22 material interest?</p> <p>23 Q. Aren't you an expert on applying</p> <p>24 SEC Regulation S-X, Section 229.404?</p> <p>25 MR. BUTLER: Objection to form.</p>

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<p style="text-align: right;">Page 258</p> <p>1 D. Larue</p> <p>2 You can ask the question, but he has</p> <p>3 never been held out on that provision.</p> <p>4 Q. Mr. Larue, do you believe that you</p> <p>5 are an expert in applying SEC Regulation S-K,</p> <p>6 Section 229.404?</p> <p>7 A. I understand this regulation, yes.</p> <p>8 Q. What does indirect material</p> <p>9 interest mean?</p> <p>10 A. It's not a defined term.</p> <p>11 Q. What does it mean?</p> <p>12 A. It could be different things to</p> <p>13 different people.</p> <p>14 Q. What does the SEC intend it to</p> <p>15 mean?</p> <p>16 MR. BUTLER: Objection to form.</p> <p>17 How can he testify as to what the SEC</p> <p>18 intends in a regulation to mean, so I</p> <p>19 object to the question.</p> <p>20 MR. HARRIS: Most experts can't.</p> <p>21 MR. BUTLER: I know your experts</p> <p>22 can't.</p> <p>23 MR. HARRIS: If they can't, then</p> <p>24 they can't assist the jury.</p> <p>25 MR. BUTLER: That's not true. You</p>	<p style="text-align: right;">Page 260</p> <p>1 D. Larue</p> <p>2 A. I don't believe. I would have to</p> <p>3 see a full copy of this regulation. I don't</p> <p>4 believe that it sets forth specifically a</p> <p>5 creditor interest. I don't believe it</p> <p>6 identifies a creditor interest.</p> <p>7 In my opinion, they probably mean</p> <p>8 to include -- they probably mean to have a</p> <p>9 creditor interest subsumed in the term</p> <p>10 material interest, but I don't believe they</p> <p>11 state that explicitly.</p> <p>12 Q. Let me make sure I understand.</p> <p>13 As you understand the term indirect</p> <p>14 material interest, were the loans by Willard,</p> <p>15 Lernout and Hauspie to LDF an indirect</p> <p>16 material interest in LDF?</p> <p>17 A. I believe I opined that I felt that</p> <p>18 they were.</p> <p>19 Q. So, in your opinion, L&H should</p> <p>20 have disclosed those loans by Lernout,</p> <p>21 Hauspie and Willard to LDF in L&H's 1999</p> <p>22 financial statements, correct?</p> <p>23 A. I believe that's what I said. I</p> <p>24 would like to find that in my report to see</p> <p>25 exactly what I said.</p>
<p style="text-align: right;">Page 259</p> <p>1 D. Larue</p> <p>2 can't confuse the jury.</p> <p>3 Q. Do you have any understanding of</p> <p>4 the term indirect material interest?</p> <p>5 A. Of course.</p> <p>6 Q. What is your understanding?</p> <p>7 A. My understanding would have to be</p> <p>8 by way of example.</p> <p>9 Q. Provide me some examples.</p> <p>10 A. As I stated later in my report, the</p> <p>11 fact that the officers loaned money to the</p> <p>12 LDF -- to LDF meant that the officers of L&H</p> <p>13 had an economic interest that was material,</p> <p>14 that exceeded the \$60,000 limit and for that</p> <p>15 reason, if they were considered to be -- for</p> <p>16 that reason, it appears that there should</p> <p>17 have been a disclosure.</p> <p>18 Q. So, in fact, it is now clear that</p> <p>19 on the facts, as you have assumed them, that</p> <p>20 SEC Regulation S-X, Section 229.404 required</p> <p>21 the loans by Lernout, Hauspie and Willard to</p> <p>22 the LDF -- to LDF to be disclosed, correct?</p> <p>23 MR. BUTLER: Objection. I think</p> <p>24 you got the name wrong, but you can</p> <p>25 answer.</p>	<p style="text-align: right;">Page 261</p> <p>1 D. Larue</p> <p>2 Q. We looked at it earlier.</p> <p>3 A. I thought we had.</p> <p>4 Q. You suggested it was only if they</p> <p>5 were related parties and now it appears as</p> <p>6 though you are conceding that based on the</p> <p>7 facts, that you've assumed that Lernout,</p> <p>8 Hauspie and Willard were related parties to</p> <p>9 LDF as defined by the SEC?</p> <p>10 MR. BUTLER: Objection to form and</p> <p>11 there is no question there.</p> <p>12 A. That's not what I said.</p> <p>13 In paragraph 119, it states here,</p> <p>14 Disclosure by L&H of this loan to the LDF</p> <p>15 LDCs would appear to have been required by</p> <p>16 SEC Regulation S-K, Section 229.404 and I</p> <p>17 don't qualify that by any reference to</p> <p>18 related parties.</p> <p>19 In the preceding paragraph, I</p> <p>20 pointed out that there is a related party</p> <p>21 issue under FASB 57.</p> <p>22 Q. So your correction is that your</p> <p>23 report, in fact, makes clear that L&H should</p> <p>24 have disclosed this loan, correct?</p> <p>25 A. I'm not correcting anything. I'm</p>

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<p style="text-align: right;">Page 262</p> <p>1 D. Larue</p> <p>2 correcting you.</p> <p>3 Q. That's what I meant.</p> <p>4 A. Okay. I thought you said I was</p> <p>5 correcting myself.</p> <p>6 Q. Your correction was that in your</p> <p>7 report, you believe you made clear that L&H,</p> <p>8 in your opinion, should have disclosed in its</p> <p>9 1999 financial statements the loan by</p> <p>10 Lernout, Hauspie and Willard to LDF, correct?</p> <p>11 A. Under this regulation, I believe I</p> <p>12 did make that clear.</p> <p>13 Q. Now, let's turn the guarantees and</p> <p>14 let's take a look at -- can a guarantee ever</p> <p>15 be an indirect material interest?</p> <p>16 A. Again, that term is not defined in</p> <p>17 these old regulations, so could it be,</p> <p>18 possibly, yes.</p> <p>19 Q. In your opinion?</p> <p>20 A. In my opinion, it could be.</p> <p>21 Q. And what would make a guarantee, in</p> <p>22 your opinion, an indirect material interest?</p> <p>23 A. Whether the SEC considers that to</p> <p>24 be an indirect material interest, again, in</p> <p>25 paragraph 111, the regulation, that</p>	<p style="text-align: right;">Page 264</p> <p>1 D. Larue</p> <p>2 guarantees.</p> <p>3 Q. I'm asking for yours, you're the</p> <p>4 expert whose I'm asking for. I understand</p> <p>5 other experts may have a different view. I</p> <p>6 understand that, but I'm asking for yours.</p> <p>7 MR. BUTLER: You don't have to give</p> <p>8 him commentary on every answer. Just</p> <p>9 ask a question.</p> <p>10 A. If it would have been me. I would</p> <p>11 have been more comfortable disclosing the</p> <p>12 guarantees.</p> <p>13 Q. But what, in your view, and I</p> <p>14 understand that and I appreciate that, in</p> <p>15 your view, what -- under what circumstances,</p> <p>16 could a guarantee be an indirect material</p> <p>17 interest?</p> <p>18 A. If the probability that the</p> <p>19 guarantor may have to make good on the</p> <p>20 guarantee is more than remote, then you get</p> <p>21 into that materiality issue.</p> <p>22 Is this a material interest and is</p> <p>23 it the kind of interest that was contemplated</p> <p>24 by the SEC?</p> <p>25 Q. Does the level of capitalization of</p>
<p style="text-align: right;">Page 263</p> <p>1 D. Larue</p> <p>2 regulation does not provide clear and</p> <p>3 specific guidelines for the appropriate</p> <p>4 disclosure of guarantees or CDSs. It's not</p> <p>5 clear whether L&H would have been required to</p> <p>6 disclose the promised guarantees or CDSs made</p> <p>7 by Lernout, Hauspie and Willard in their</p> <p>8 personal capacities.</p> <p>9 Q. I understand that, but,</p> <p>10 unfortunately, I don't think that Dexia is</p> <p>11 going to have -- attempt to have the SEC come</p> <p>12 testify, but they are going to attempt to</p> <p>13 have you come testify, so that's why I'm</p> <p>14 asking for your understanding.</p> <p>15 Under what circumstances and your</p> <p>16 understanding based upon your experience can</p> <p>17 a guarantee be an indirect material interest,</p> <p>18 as that term is used in the regulation quoted</p> <p>19 in paragraph 48 of your report?</p> <p>20 A. Since the SEC doesn't define what</p> <p>21 it means by material interest to include</p> <p>22 guarantees, that would be a subjective</p> <p>23 determination that could vary from one expert</p> <p>24 to another as to whether or not that</p> <p>25 terminology was meant at that time to include</p>	<p style="text-align: right;">Page 265</p> <p>1 D. Larue</p> <p>2 the entity whose loan guarantee -- is</p> <p>3 guaranteed effect whether or not it is likely</p> <p>4 that the guarantee will be called upon?</p> <p>5 A. It could.</p> <p>6 Q. Let's turn to page 23 of your</p> <p>7 report.</p> <p>8 A. Could I add something?</p> <p>9 Q. Sure.</p> <p>10 A. The SEC in its proposed amendments</p> <p>11 to this regulation under SK was very critical</p> <p>12 of its own regulation as being unclear and</p> <p>13 ambiguous and one of the reasons that they</p> <p>14 proposed these changes was to clarify and try</p> <p>15 to minimize the amount of ambiguity and I</p> <p>16 actually cited that later in my report, so</p> <p>17 even the SEC thought these were pretty</p> <p>18 ambiguous regulations and undertook to change</p> <p>19 them.</p> <p>20 What page?</p> <p>21 Q. Page 23.</p> <p>22 If you look at the bottom, one of</p> <p>23 the facts that you were asked to assume that</p> <p>24 Radial was a company of limited liability</p> <p>25 incorporated on May 28, 1998 with a capital</p>

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<p style="text-align: right;">Page 266</p> <p>1 D. Larue</p> <p>2 of 2.5 million Belgium francs by Mr. Frans</p> <p>3 van Deun?</p> <p>4 A. Yes, sir.</p> <p>5 Q. How much in 1998 was 2.5 million</p> <p>6 francs?</p> <p>7 A. A good guess is it would be about</p> <p>8 \$72,000. I don't know what it was. You used</p> <p>9 that number earlier in our discussion today,</p> <p>10 but I think it was -- I don't know.</p> <p>11 Q. Did you ever ask anybody when you</p> <p>12 were asked to assume this fact, how much is</p> <p>13 this, is this a hundred million dollars or is</p> <p>14 it two cents?</p> <p>15 A. I know I used some of the</p> <p>16 conversion data that was contemporaneous, not</p> <p>17 on that specific date, but about that time,</p> <p>18 to make just a rough calculation.</p> <p>19 Q. What did you come up with?</p> <p>20 A. I don't remember. It was probably</p> <p>21 70 or \$80,000.</p> <p>22 Q. So you were asked to assume that</p> <p>23 Artesia loaned \$6 million to a company that</p> <p>24 was capitalized at \$72,000, correct?</p> <p>25 A. Basically, that's correct.</p>	<p style="text-align: right;">Page 268</p> <p>1 D. Larue</p> <p>2 Q. Were you asked to assume whether or</p> <p>3 not Artesia asked for a personal guarantee</p> <p>4 from Frans Van Deun?</p> <p>5 A. I don't know if the bank asked for</p> <p>6 a personal loan from that individual. I</p> <p>7 don't know if he received a personal loan.</p> <p>8 Q. I asked for a personal guarantee.</p> <p>9 Perhaps my question wasn't clear. Let me</p> <p>10 restate your question.</p> <p>11 You were asked to assume that Dexia</p> <p>12 asked Frans Van Deun to personally guarantee</p> <p>13 Artesia's loan to Radial.</p> <p>14 A. I wasn't asked to assume that.</p> <p>15 Q. And you don't know one way or the</p> <p>16 other, correct?</p> <p>17 A. I don't know one way or the other.</p> <p>18 Q. In your experience, have you ever</p> <p>19 come across a bank that has obtained a</p> <p>20 guarantee from executives of the seller of</p> <p>21 goods where the -- let me change that.</p> <p>22 Mr. Larue, in your experience, have</p> <p>23 you ever seen an instance in which a bank has</p> <p>24 obtained personal guarantees from executives</p> <p>25 of the selling corporation for a loan that</p>
<p style="text-align: right;">Page 267</p> <p>1 D. Larue</p> <p>2 Q. And you were asked to assume that</p> <p>3 they loaned that on either the last or next</p> <p>4 to last business day of L&H's third quarter,</p> <p>5 correct?</p> <p>6 A. September 29, 1998.</p> <p>7 Q. And you were asked to assume</p> <p>8 that -- well, were you asked to assume that</p> <p>9 Artesia did any due diligence on Radial's</p> <p>10 ability to repay Artesia's loan to Radial?</p> <p>11 A. I don't know what, if anything,</p> <p>12 Artesia did in terms of doing a due</p> <p>13 diligence.</p> <p>14 Q. And were you asked to assume any</p> <p>15 reason as to why Artesia looked to -- for</p> <p>16 guarantees from Lernout and Hauspie</p> <p>17 executives?</p> <p>18 A. The reason that a bank normally</p> <p>19 requires or desires a guarantee is to</p> <p>20 minimize its risk.</p> <p>21 Q. But why did they look -- do you</p> <p>22 know why they looked to Lernout and Hauspie</p> <p>23 executives for those guarantees?</p> <p>24 A. Why specifically they looked to</p> <p>25 them? No.</p>	<p style="text-align: right;">Page 269</p> <p>1 D. Larue</p> <p>2 the bank makes to the buying corporation?</p> <p>3 MR. BUTLER: Objection to form.</p> <p>4 A. Have I seen that in my personal</p> <p>5 experience?</p> <p>6 Q. And professional experience.</p> <p>7 A. Personal and professional</p> <p>8 experience, possibly.</p> <p>9 Q. Identify it for me, please.</p> <p>10 A. I would refer to a case that I</p> <p>11 testified in sometime back. It was what they</p> <p>12 call a lease strip case and there were a</p> <p>13 number of guarantees circular flows of cash,</p> <p>14 installment notes going back and forth.</p> <p>15 I believe in one or more of those</p> <p>16 lease strip cases, it may have been that the</p> <p>17 owners of the seller guaranteed that the debt</p> <p>18 of the buyer.</p> <p>19 Q. It may have been, but you don't</p> <p>20 recall one way or the other?</p> <p>21 A. If I had time to think about it,</p> <p>22 those were very, very complicated facts and</p> <p>23 it's been some time since I testified in that</p> <p>24 case. I just don't recall, but it may be.</p> <p>25 Q. So is it fair to say that at most,</p>

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<p>1 D. Larue 2 in your entire professional career, you have 3 only come in contact with perhaps one other 4 time in which the executives of the seller 5 guaranteed the loans of the buyer? 6 A. I alluded to the fact there were a 7 number of those cases. One went to trial, 8 the other settled prior to trial, so it 9 wasn't just the one case, it was probably 10 three or four that I'm referring to. I don't 11 recall that I've seen this from my personal 12 experience more than in those cases. 13 Q. Now, as a director of 14 Microstrategy, if the CEO of Microstrategy 15 guaranteed the loan of any of Microstrategy's 16 customers, do you believe that 17 Microstrategy's investors would be interested 18 in that fact? 19 A. Under the new regulations, SK, that 20 would have to be disclosed. 21 Q. But I asked a different question. 22 I asked a question of as a director 23 of Microstrategy, it's not a question of 24 whether or not it has to be disclosed. As a 25 director of Microstrategy, if the CEO of</p>	<p>1 D. Larue 2 personal and separate economic benefit or 3 detriment, as long as he accepted the 4 economic risks and obtained all of the 5 economic benefits as a result of that 6 transaction and as long as it was very clear 7 that Microstrategy was under no express or 8 implied obligation to reimburse him in the 9 event of losses and as long as the customer 10 wasn't or didn't have the capacity to become 11 a major competitor as a result of this loan 12 and guarantee, I'm not sure I would have a 13 lot of problems with that other than I would 14 know that under the SEC regulations, that 15 would have to be disclosed. 16 Q. Mr. Larue, given your experience as 17 a forensic examiner, is there any reason that 18 you can think of that Messrs. Lernout, 19 Hauspie and Willard would have guaranteed 20 Radial's loan other than to ensure that L&H 21 booked revenue in the third quarter of 1998? 22 MR. BUTLER: Objection to form. 23 A. It's my understanding that when 24 they ultimately did sell a CDS, that they 25 were entitled to a fee.</p>
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<p>1 D. Larue 2 Microstrategy made a -- guaranteed a \$6 3 million loan of one of Microstrategy's 4 customers, do you think Microstrategy's 5 investors would want to know that? 6 MR. BUTLER: Objection to form. 7 A. I think it depends on the facts and 8 circumstances. 9 Q. Okay. So there are certain 10 instances in which you think the investors of 11 Microstrategy wouldn't care? 12 A. Yes. 13 MR. BUTLER: Objection to form. 14 Q. Would it matter if the guarantee 15 was on a loan to a company that was 16 capitalized at \$72,000 in 1998? 17 A. That might be a fact or 18 circumstance that would be relevant to me. 19 Q. Is it a fact or circumstance that's 20 relevant to you? 21 A. Could be. 22 My concern would be to what extent 23 might Microstrategy be called upon to bear 24 the risk that individually, an officer of the 25 company had chosen to assume for his own</p>	<p>1 D. Larue 2 Q. How much? 3 A. I don't remember. 4 Q. Did you ever know? 5 A. I've seen some reference to that. 6 I can't recall where. 7 Q. And what was the magnitude of that 8 fee? 9 A. I don't remember what it was. 10 Q. Do you have any approximation, a 11 hundred bucks, a million bucks? 12 A. It wasn't a million, it wasn't a 13 hundred bucks. 14 Q. Was it a thousand or a hundred 15 thousand? 16 A. I don't recall. 17 You asked me was there any other 18 fact or circumstance that might motivate 19 somebody like Lernout, Hauspie and Willard to 20 sell a CDS. Yes, there is an economic 21 motive. I assume the risk and I get paid for 22 that. 23 Q. And so any other -- other than 24 trying to make some money, however it may -- 25 MR. BUTLER: Pretty classic</p>

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<p style="text-align: right;">Page 274</p> <p>1 D. Larue</p> <p>2 motivation.</p> <p>3 Q. However much it may have been, and</p> <p>4 to ensure that L&H was able to book revenue</p> <p>5 in the third quarter of 1998, can you think</p> <p>6 of any other reason that Lernout, Hauspie and</p> <p>7 Willard would have guaranteed Dexia's loan to</p> <p>8 Radial?</p> <p>9 MR. BUTLER: Objection to form.</p> <p>10 A. Again, I don't know what they were</p> <p>11 thinking when they made that decision. They</p> <p>12 could have. I guess anything is possible.</p> <p>13 They could have believed correctly or</p> <p>14 incorrectly that there might be a difference</p> <p>15 between a guarantee that was issued by L&H</p> <p>16 versus a guarantee that their stockholders</p> <p>17 had issued. That this would achieve legal or</p> <p>18 tax or accounting objectives that were</p> <p>19 different from those that would have resulted</p> <p>20 if they had structured the transaction</p> <p>21 differently.</p> <p>22 It's difficult to anticipate the</p> <p>23 universe of possibilities correctly or</p> <p>24 incorrectly that might have gone through</p> <p>25 someone's mind to motivate them.</p>	<p style="text-align: right;">Page 276</p> <p>1 D. Larue</p> <p>2 A. I was not asked to assume one way</p> <p>3 or the other.</p> <p>4 Q. You don't know whether it was ever</p> <p>5 put?</p> <p>6 A. I don't know for a fact.</p> <p>7 Q. Do you have a belief?</p> <p>8 A. I believe they were paid something</p> <p>9 on one of the CDSs, but, honestly, that's a</p> <p>10 vague recollection.</p> <p>11 Q. And nothing on the other CDS?</p> <p>12 A. I don't think I've seen anything</p> <p>13 one way or the other on the other CDS or</p> <p>14 other CDSs.</p> <p>15 It certainly wasn't a basis for</p> <p>16 forming my opinions.</p> <p>17 Q. Let's turn to your rebuttal report,</p> <p>18 which I believe is Larue Exhibit 5.</p> <p>19 Now, on page 1, you have some</p> <p>20 paragraphs with regard to shell entity and</p> <p>21 economic substance, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you understand the term shell</p> <p>24 entity?</p> <p>25 A. I have my conception as to what a</p>
<p style="text-align: right;">Page 275</p> <p>1 D. Larue</p> <p>2 Q. But the notion that they could have</p> <p>3 achieved different accounting treatment would</p> <p>4 be wrong, correct, because accounting looks</p> <p>5 at substance rather than form, correct?</p> <p>6 A. Well, accounting as a general</p> <p>7 statement, yes, looks to substance, typically</p> <p>8 looks to substance rather than form where the</p> <p>9 two do not comport with one another.</p> <p>10 However, and this is a big however,</p> <p>11 GAAP is extremely complex, it has a lot of</p> <p>12 detailed rules. Sometimes it has very, very</p> <p>13 bright lines and as I pointed out in my</p> <p>14 rebuttal report, sometimes the difference</p> <p>15 between a little bit of difference in form</p> <p>16 produces a very, very different result under</p> <p>17 GAAP, even though you have two -- more or</p> <p>18 less economic equivalents, option A, option</p> <p>19 B, there is a formal difference, but not</p> <p>20 really a substantive difference, yet GAAP</p> <p>21 makes a meaningful distinction of how those</p> <p>22 transactions are respectfully accounted for.</p> <p>23 Q. Were you asked to assume whether or</p> <p>24 not Dexia actually paid Lernout, Willard and</p> <p>25 Hauspie on the CDS?</p>	<p style="text-align: right;">Page 277</p> <p>1 D. Larue</p> <p>2 shell entity is. It's not defined under</p> <p>3 GAAP.</p> <p>4 Q. Do you have an understanding of</p> <p>5 what economic substance it?</p> <p>6 A. Of course.</p> <p>7 Q. Do you believe that most qualified</p> <p>8 accountants have an understanding of what</p> <p>9 economic substance means?</p> <p>10 MR. BUTLER: Objection to form.</p> <p>11 A. I would certainly hope so.</p> <p>12 Q. Now, you talked about your</p> <p>13 understanding in various places in your</p> <p>14 rebuttal report, for example, paragraph 9 on</p> <p>15 page 2.</p> <p>16 A. Uh-huh -- yes.</p> <p>17 Q. Does your understanding come --</p> <p>18 again, this is what you were asked to assume</p> <p>19 by Dexia's counsel, correct?</p> <p>20 A. Well, it comes from my</p> <p>21 understanding of what I was to assume and the</p> <p>22 fact that I haven't seen anything that</p> <p>23 contradicts that understanding.</p> <p>24 Q. But you didn't search for anything</p> <p>25 that contradicts, correct?</p>

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1 D. Larue

2 A. Yes, sir.

3 Q. In paragraph 11, you take issue
4 with Mr. Love's assertion that the
5 transactions between L&H and the LDCs were
6 not legitimate arm's length transactions,
7 correct?

8 A. Yes.

9 Q. You don't know one way or the
10 other, do you, whether or not the
11 transactions between L&H and the LDCs were or
12 were not legitimate arm's length
13 transactions, correct?

14 A. You'll have to define what you mean
15 by legitimate arm's length transaction.

16 Q. Well, you didn't do anything to
17 investigate the nature of the relationship,
18 the transactions between L&H and LDC,
19 correct.

20 A. I believe it was Mr. Love who
21 asserted that these were not legitimate arm's
22 length transactions. He cites a number or
23 refers to a number of factual assertions to
24 support that statement, but this, what this
25 paragraph does is it points out four things.

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1 D. Larue

2 First of all, there are facts and
3 circumstances that negate the assertion that
4 these were not legitimate arm's length
5 transactions. One of those is the fact that
6 you had independent -- I factually assumed
7 that there were independent investors who had
8 money at stake to varying degrees, depending
9 upon which of the entities we're referring to
10 who were unrelated to Lernout, Hauspie and
11 Willard.

12 I also pointed out on page 3, I
13 have factually assumed that the tools that
14 the LDCs acquired were functional tools that
15 had the inherent capacity to be developed to
16 exploit a market that the LDCs actually had a
17 bonafide enforceable license to exploit and
18 the other things that I have listed in my
19 report.

20 Q. Now, I understand that. I guess --
21 you said the facts and circumstances
22 undermine Mr. Love's contentions, correct?

23 What you really meant was that the
24 assumptions that you were asked to make by
25 Dexia's counsel undermine Mr. Love's

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1 D. Larue

2 assertions, correct?

3 A. Estimate and were not contradicted
4 by documents that I reviewed, yes.

5 Q. Correct, but you cannot say that
6 you disagree with Mr. Love on the facts
7 following an investigation of the facts,
8 correct?

9 A. Whose investigation?

10 Q. Yours.

11 A. I didn't conduct an investigation.

12 Q. Exactly. So you don't know whether
13 or not the relationships between L&H and LDCs
14 were or were not legitimate arm's length
15 transactions, whatever it means?

16 A. No, I won't agree with that.

17 I don't know with certainty what
18 the underlying facts were. I stated the
19 facts that I've assumed clearly in my report
20 and in my rebuttal report.

21 Based on the facts that I have
22 assumed, do those facts support Mr. Love's
23 conclusion that these were not legitimate
24 arm's length transactions, that these
25 entities were empty shell entities, they were

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1 D. Larue

2 shams and had no economic substance?

3 Some facts may support that. Other
4 facts detract from that. That's what I
5 pointed out here. He makes a factual
6 assertion that there were no assets in those
7 LDCs and I don't -- the fact that I've
8 assumed indicate that the LDCs did, in fact,
9 have rights that had value.

10 Q. But you haven't even made a factual
11 assertion, you just repeated assumptions, so
12 when you say the fact, what you mean is my
13 assumptions, correct?

14 A. My factual assumptions for which I
15 have not found documents that would indicate
16 otherwise and which were not rebutted in his
17 rebuttal report.

18 Q. Is it fair to say that you don't
19 find something unless you look for it?

20 MR. BUTLER: Objection to form.

21 Mr. Love looked for it. He didn't find
22 it either.

23 A. I've stated the facts on which I
24 base my opinions.

25 Q. Let me try my question again.

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1 D. Larue

2 Is it true that you don't find
3 something unless you look for it?

4 A. Unless you look for it or you're
5 provided with information about it,
6 especially when that information has been
7 indirectly validated by another source.

8 Q. What other source?

9 A. I don't believe that Mr. Love, in
10 his rebuttal report, takes issue with any of
11 the facts I represented in my report that I
12 was relying upon.

13 Q. By not taking issue with it, you're
14 saying he is confirming them?

15 A. No, I'm not saying he is confirming
16 them. I would have expected if I had made a
17 mistake or had a misunderstanding of a
18 material fact on which I based my opinion and
19 stated clearly in my report that he would
20 have made mention of that in his rebuttal
21 report.

22 Q. Don't you think he is entitled to
23 assume that you are entitled to assume
24 whatever you want to assume, all you would
25 say is I just assumed it, I'm not saying it's

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1 D. Larue

2 right or wrong, I just assumed it because
3 that's been your testimony here today,
4 correct?

5 A. Mr. Love can write his rebuttal
6 report any way he sees fit. I would have
7 expected that if there were significant
8 factual misstatements in my report, however
9 well intended, that he would have observed --
10 made observations about that and would have
11 addressed or would have opined as to how that
12 might have factored in my opinion.

13 Q. I just want to make clear, there
14 were no factual statements or misstatements
15 in your report. There were simply statements
16 of what you were asked to assume, correct?

17 A. I was asked to assume facts that it
18 is my belief and understanding will be borne
19 out by the record.

20 Q. And what is your belief and
21 understanding based on, the extensive
22 discovery that you've read?

23 MR. BUTLER: Objection to form.

24 Q. I forgot you didn't read a single
25 deposition transcript.

1 D. Larue

2 MR. BUTLER: This sarcasm has no
3 place. Stop. Stop. Stop.

4 MR. HARRIS: Are you instructing
5 him not to answer it? Then instruct him
6 not to answer it. That's what you are
7 entitled to do.

8 MR. BUTLER: You are not entitled
9 to use that tone of voice and sarcasm.
10 You've gone around and around on this.
11 His answers have all been consistent and
12 so I object to the tone you were using
13 with this witness.

14 Q. What is the basis of your belief
15 and understanding that the record will bear
16 out as true the assumptions that you set
17 forth in your report?

18 A. Several reasons. One is that the
19 complaints that I referred to in Exhibit 3 of
20 my report, which I believe are on the other
21 side of this issue, basically disclose or
22 make these representations in that
23 representation of the underlying facts and
24 circumstances. That's part.

25 The other thing, quite frankly,

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1 D. Larue

2 what possible benefit would counsel have had
3 in misrepresenting facts to me at the end of
4 the day. These facts will -- the facts upon
5 which I relied will be established as being
6 either accurate or not accurate.

7 Why ask me to write a report based
8 on facts known to be contradictory to the
9 actual facts in this case. That doesn't make
10 sense to me.

11 Q. It didn't make sense to us either,
12 but it happened.

13 MR. BUTLER: I object to the
14 commentary. I obviously disagree with
15 your commentary and I think it's
16 inappropriate for you to give commentary
17 to the answers. I think you should just
18 ask questions.

19 MR. HARRIS: We had this
20 discussion. You disagree with what I'm
21 supposed to do and I disagree with what
22 you've done, but you haven't paid any
23 attention. You want to do it the way
24 you want to do it, whether it's proper
25 or not.

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<p style="text-align: right;">Page 286</p> <p>1 D. Larue</p> <p>2 MR. BUTLER: You have about six</p> <p>3 minutes left by my clock.</p> <p>4 A. The facts I have been asked to</p> <p>5 assume have not been contradicted by any of</p> <p>6 the documents I looked at and I looked at a</p> <p>7 lot of documents, a small percentage of the</p> <p>8 underlying documents, but as you can see from</p> <p>9 Exhibit 3, it's a rather lengthy list and,</p> <p>10 fourth, I can't speak for Mr. Love and how he</p> <p>11 goes about preparing rebuttal reports, but</p> <p>12 certainly one of the things that I would do</p> <p>13 and have done is if I were rebutting someone</p> <p>14 else's report and I saw a fact that I knew or</p> <p>15 believed to be incorrect and if that fact</p> <p>16 were a basis upon which the opposing expert</p> <p>17 based their opinion, it would be something</p> <p>18 that I would address in my report and,</p> <p>19 frankly, I would have expected someone to</p> <p>20 address that in my report that's one reason</p> <p>21 for the transparency of my report.</p> <p>22 Q. Mr. Larue, did the complaint by the</p> <p>23 SEC against Lernout and Hauspie Speech</p> <p>24 Products, Exhibit 3, undermine the factual</p> <p>25 assumptions that you were asked to make in</p>	<p style="text-align: right;">Page 288</p> <p>1 D. Larue</p> <p>2 support Mr. Love's assertion or support the</p> <p>3 facts you were asked to assume about the</p> <p>4 LDCs?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. Let me clarify, and I wasn't clear</p> <p>7 before, when I said document, I didn't mean</p> <p>8 someone else's opinion or someone's</p> <p>9 secondhand interpretation of the underlying</p> <p>10 facts and circumstances and I wasn't clear</p> <p>11 about that.</p> <p>12 When I said document, I meant the</p> <p>13 Bates numbered documents listed in Exhibit 3.</p> <p>14 Q. Now, I believe in your rebuttal</p> <p>15 report, you say there is no evidence that</p> <p>16 you're aware of that suggests Lernout,</p> <p>17 Hauspie or Willard controlled or managed any</p> <p>18 of the LDCs, correct?</p> <p>19 A. Where do I say that?</p> <p>20 THE VIDEOGRAPHER: I was asked to</p> <p>21 mention for the record, it's 5:04, seven</p> <p>22 hours into the deposition.</p> <p>23 MR. BUTLER: Let's wrap it up. If</p> <p>24 you can finish quickly, we appreciate it</p> <p>25 because he has a plane to catch.</p>
<p style="text-align: right;">Page 287</p> <p>1 D. Larue</p> <p>2 your complaint, in your review?</p> <p>3 MR. BUTLER: Objection to form.</p> <p>4 A. I would need to read that 10-page</p> <p>5 document from start to finish and my report</p> <p>6 again to know.</p> <p>7 Q. I see. So --</p> <p>8 A. And I would also refer back to our</p> <p>9 earlier conversation.</p> <p>10 My understanding is these are</p> <p>11 allegations that have not been definitively</p> <p>12 established or adjudicated, if that's the</p> <p>13 right term.</p> <p>14 I don't know who wrote this report.</p> <p>15 I don't know how much time and effort went</p> <p>16 into preparing this report. I don't know how</p> <p>17 many of the 1.5 million documents that are</p> <p>18 apparently out there were reviewed by the</p> <p>19 people who drafted this report. There are a</p> <p>20 lot of things I don't know, so I don't know.</p> <p>21 Q. I was just focusing, you said you</p> <p>22 saw no document that undermined any of the</p> <p>23 factual assumptions.</p> <p>24 Does the SEC's allegation that the</p> <p>25 LDCs were little more than shell companies</p>	<p style="text-align: right;">Page 289</p> <p>1 D. Larue</p> <p>2 MR. HARRIS: It's either about the</p> <p>3 seven hours or not. Do you want to</p> <p>4 continue or end it?</p> <p>5 MR. BUTLER: You said you were</p> <p>6 willing to live within seven hours.</p> <p>7 Do you need more time?</p> <p>8 MR. HARRIS: I'm willing to play by</p> <p>9 the rules of the court and so if you are</p> <p>10 insisting upon that I end in seven</p> <p>11 hours, that's fine.</p> <p>12 MR. BUTLER: I'm not insisting. I</p> <p>13 will talk about it with you. We need to</p> <p>14 leave to catch a plane, so if you have</p> <p>15 one or two more questions, otherwise,</p> <p>16 let's go off the record.</p> <p>17 Q. If you look at page 5 of your</p> <p>18 rebuttal report, in paragraph 20, you say,</p> <p>19 Mr. Love asserts that under GAAP, the LDCs</p> <p>20 were related parties to L&H because of the</p> <p>21 extensive role played by L&H and its</p> <p>22 principal shareholders and senior officers in</p> <p>23 creating and financing these companies.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

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<p style="text-align: right;">Page 290</p> <p>1 D. Larue</p> <p>2 Q. Is Mr. Love's assertion in your</p> <p>3 view that L&H played an extensive role and</p> <p>4 its senior shareholders and officers in</p> <p>5 creating and financing the LDCs accurate?</p> <p>6 MR. BUTLER: Objection to form.</p> <p>7 A. Unfortunately, here, as throughout</p> <p>8 most of that report, there is no citation or</p> <p>9 authority that he relies on in making that</p> <p>10 assertion.</p> <p>11 It wasn't possible for me to check</p> <p>12 Bates stamp numbers or look at the</p> <p>13 documentation that he was apparently relying</p> <p>14 on in making an independent assessment as to</p> <p>15 whether or not that documentation supported</p> <p>16 or detracted from his opinion here.</p> <p>17 He also doesn't define role and I</p> <p>18 would point out that there is GAAP, there is</p> <p>19 TPA 5100.63 -- I think it's 64, that</p> <p>20 explicitly states that -- I'll -- that</p> <p>21 permits basically involvement in the</p> <p>22 facilitation of financing without that being</p> <p>23 considered prohibited management activity.</p> <p>24 Q. Do you have any facts -- are you</p> <p>25 aware of any facts that suggest Mr. Love's</p>	<p style="text-align: right;">Page 292</p> <p>1 D. Larue</p> <p>2 know whether here, you considered \$72,000 to</p> <p>3 be a substantial amount that was contributed</p> <p>4 by the respective owners and investors of the</p> <p>5 LDCs?</p> <p>6 A. You suggested I apply a GAAP</p> <p>7 materially standard in a context of why I</p> <p>8 take an exception to his reference to these</p> <p>9 entities as being empty and with no assets.</p> <p>10 That's not what I've done here. He makes</p> <p>11 this statement. We're not talking about GAAP</p> <p>12 materiality. He made the representation that</p> <p>13 these were empty shell entities with no</p> <p>14 assets. That does not comport with my</p> <p>15 understanding of the fact.</p> <p>16 My understanding of the facts is</p> <p>17 that Radial had some capitalization from</p> <p>18 independent investors. My understanding is</p> <p>19 that LIC had more and that some of the --</p> <p>20 there were loans guaranteed by Mr. Hardeman</p> <p>21 and assets, personal assets of Mr. Hardeman</p> <p>22 that were pledged for the Artesia loan and</p> <p>23 it's also my understanding that LDF had a</p> <p>24 substantial amount of capital, debt capital</p> <p>25 or equity capital from sources other than</p>
<p style="text-align: right;">Page 291</p> <p>1 D. Larue</p> <p>2 statement that you quote there is inaccurate?</p> <p>3 A. I didn't assert this statement.</p> <p>4 Q. I take it the answer is no?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. Again, my comment here is the fact</p> <p>7 that he didn't support his conclusion, I</p> <p>8 don't know whether that statement is true or</p> <p>9 not.</p> <p>10 Q. If you look at page 3, paragraph</p> <p>11 13-A, you say, It's my understanding that the</p> <p>12 respected owners/investors of the LDCs</p> <p>13 contributed substantial amounts of cash to</p> <p>14 them at the time of their formation and, in</p> <p>15 some cases, guaranteed loans or pledged</p> <p>16 personal assets to secure loans made to these</p> <p>17 entities, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Is it your -- do you consider the</p> <p>20 \$72,000 that was used to capitalize Radial to</p> <p>21 be a substantial amount?</p> <p>22 A. It would be to me.</p> <p>23 Q. I understand that it would be to</p> <p>24 you, but you're a professor and you're not an</p> <p>25 auditor or something like that, but I want to</p>	<p style="text-align: right;">Page 293</p> <p>1 D. Larue</p> <p>2 Artesia.</p> <p>3 It's also my understanding that</p> <p>4 these entities had, you know, real licenses</p> <p>5 and real tools with which to develop those</p> <p>6 licenses or to sell to someone else.</p> <p>7 For his statement -- his repeated</p> <p>8 statement that these are empty shell entities</p> <p>9 with no assets, that doesn't comport with my</p> <p>10 understanding of the underlying facts and</p> <p>11 that's the point that I've made here.</p> <p>12 Q. I didn't ask about that. I asked</p> <p>13 about paragraph 13-A.</p> <p>14 A. That's what I'm talking about. I'm</p> <p>15 sorry.</p> <p>16 Q. Do you --</p> <p>17 MR. BUTLER: Just a second.</p> <p>18 Q. Do you consider \$72,000 to be a</p> <p>19 substantial amount?</p> <p>20 MR. BUTLER: We have to go to catch</p> <p>21 this man's plane. You're continuing,</p> <p>22 but we're past seven hours, so I think</p> <p>23 we should go off the record.</p> <p>24 MR. HARRIS: Is this concluded?</p> <p>25 MR. BUTLER: We're concluded.</p>

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1 D. Larue	1
2 THE VIDEOGRAPHER: This concludes	2 -----INDEX-----
3 today's proceeding of the deposition of	3 WITNESS EXAMINATION BY PAGE
4 David Larue.	4 DAVID LARUE MR. HARRIS 7
5 The total number of videotapes used	5
6 was four.	6 -----INFORMATION REQUESTS-----
7 The time is 5:10.	7 REQUESTS: PAGE / LINE
8 (Time noted: 5:10 p.m.)	8 31 15
9	9
10	10 -----EXHIBITS-----
11 DAVID LARUE	11 LARUE FOR ID.
12	12 1 Curriculum vitae of David 8
13 Subscribed and sworn to before me	13 Larue
14 this ___ day of ___, 2007.	14 2 Form 10-K 12
15	15 3 U.S. Securities and Exchange 64
16	16 Commission document
17	17 4 Copy of report of David Larue 105
18	18 5 Rebuttal report 193
19	19 6 Document dated September 29, 233
20	20 1998
21	21
22	22
23	23
24	24
25	25
Page 295	
1	
2 CERTIFICATE	
3 STATE OF NEW YORK)	
4 : ss.	
5 COUNTY OF NEW YORK)	
6	
7 I, LESLIE FAGIN, a Notary Public	
8 within and for the State of New York, do	
9 hereby certify:	
10 That DAVID LARUE, the witness whose	
11 deposition is hereinbefore set forth, was	
12 duly sworn by me and that such deposition	
13 is a true record of the testimony given	
14 by the witness.	
15 I further certify that I am not	
16 related to any of the parties to this	
17 action by blood or marriage, and that I	
18 am in no way interested in the outcome of	
19 this matter.	
20 IN WITNESS WHEREOF, I have hereunto	
21 set my hand this 26th day of March, 2007.	
22	
23	
24 LESLIE FAGIN, RPR	
25	

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